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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

JAMAR JAMES EVANS,

Plaintiff and Appellant,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED, et al.,

Defendants and Respondents.

F056564

(Super. Ct. No. 151050)

OPINION

APPEAL from an order of the Superior Court of Merced County. Glenn A. Ritchey, Jr., Judge.

Jamar James Evans, in propria persona, for Plaintiff and Appellant.

Edmund G. Brown, Jr., Attorney General, Steven M. Gevercer and James W. Walter, Deputy Attorneys General, for Defendants and Respondents.

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Plaintiff Jamar James Evans filed a civil lawsuit against the Superior Court of California, County of Merced, and two judges on that court, the Honorable Ronald Hansen and the Honorable Hugh Flanagan (collectively defendants). Plaintiff alleged the judges committed "fraud and actual malice" when they made various court rulings and the court failed "to train or supervise" when a sheriff's deputy kept him from entering the

courthouse. Defendants demurred to the complaint and filed a motion to declare plaintiff a vexatious litigant on the basis that in the immediately preceding seven-year period, plaintiff had commenced, prosecuted or maintained in propria persona at least five litigations that had been finally determined adversely to him. (Code Civ. Proc., § 391, subd. (b)(1).)[1] Plaintiff filed a written opposition to the vexatious litigant motion.

A hearing on the demurrer and vexatious litigant motion was held in June 2008. The trial court sustained the demurrer without leave to amend.[2] With respect to the vexatious litigant motion, the court took judicial notice of the documents defendants submitted with their motion, and struck plaintiff's declaration submitted with his opposition. The court continued the hearing on the motion to give plaintiff an opportunity to supply documentary evidence regarding the status of the cases defendants relied upon and to give defendants an opportunity to submit additional briefing on the issue of whether a trial court judgment that is appealed should be considered an action finally adjudicated against plaintiff for purposes of declaring him a vexatious litigant. Both parties submitted additional briefing.

Following the continued hearing held in September, the trial court granted the motion and declared plaintiff a vexatious litigant, finding that plaintiff had commenced 13 actions in the past five years in propria persona that were finally determined adversely

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[1] All further statutory references are to the Code of Civil Procedure, unless otherwise stated.

[2] On July 17, 2008, plaintiff filed a notice of appeal from the order sustaining the demurrer without leave to amend. That appeal is pending before this court in case number F055821. Although we denied the parties' stipulation to have the two appeals consolidated, we directed the clerk/court administrator to coordinate the appeals in the two cases, with briefing and the appellate record to remain separate. Both parties in this appeal, however, cite to the appellate record in both this case and case number F055821, as the clerk's transcript in the present case is incomplete. Accordingly, we will, on our own motion, take judicial notice of the appellate record in case number F055821. (Evid. Code, § 452, subd. (d).)

to him. The court further ordered, pursuant to section 391.7, that plaintiff is prohibited from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed.

Plaintiff appeals from the order declaring him a vexatious litigant. Plaintiff asserts the trial court erred in determining that at least five litigations had been "finally determined adversely" to him because (1) federal cases should not be considered as litigation for purposes of section 391, and (2) only one of the state litigations had been finally determined. We affirm the trial court's decision.

DISCUSSION

Standard of Review

"A court exercises its discretion in determining whether a person is a vexatious litigant. [Citation.] We uphold the court's ruling if it is supported by substantial evidence. [Citations.] On appeal, we presume the order declaring a litigant vexatious is correct and imply findings necessary to support the judgment." (*Bravo v. Ismaj* (2002) 99 Cal.App.4th 211, 219 (*Bravo*).) Vexatious litigant statutes are constitutional and do not deprive a litigant of due process of law. (*Id.* at p. 222.)

The Vexatious Litigant Statute

"The vexatious litigant statute (§§ 391-391.7) was enacted in 1963 to curb misuse of the court system by those acting in propria persona who repeatedly relitigate the same issues. Their abuse of the system not only wastes court time and resources but also prejudices other parties waiting their turn before the courts." (*In re Bittaker* (1997) 55 Cal.App.4th 1004, 1008.) The statute provides a "means of moderating a vexatious litigant's tendency to engage in meritless litigation." (*Bravo*, *supra*, 99 Cal.App.4th at p. 221.)

There are four separate bases for designating a plaintiff to be a vexatious litigant. (§ 391, subd. (b).) The plaintiff's litigation conduct must fall within one of these

definitions. (See, e.g., *Holcomb v. U.S. Bank Nat. Assn.* (2005) 129 Cal.App.4th 1494, 1501.) As pertinent here, a court may declare a person to be a vexatious litigant who, in "the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been … finally determined adversely to the person…." (§ 391, subd. (b)(1).) The term "litigation" means "any civil action or proceeding, commenced, maintained or pending in any state or federal court." (§ 391, subd. (a).) Litigation includes an appeal or civil writ. (*McColm v. Westwood Park Assn.* (1998) 62 Cal.App.4th 1211, 1216.) A case is finally determined adversely to a plaintiff if he does not win the action he began, including cases which the plaintiff voluntarily dismisses. (*Tokerud v. Capitolbank Sacramento* (1995) 38 Cal.App.4th 775, 779; *In re Whitaker* (1992) 6 Cal.App.4th 54, 56.)

Substantial Evidence

Here, the trial court found plaintiff to be a vexatious litigant based on 13 prior cases that had been decided against him: (1) *Evans v. Santa Clara County Dept. of Corrections*, U.S. District Court, Northern District of California, case number C 04-1625 JW (PR) [dismissed on April 28, 2005 for failure to comply with court order and to prosecute]; (2) *Evans v. U.S. Dept. of Education*, U.S. District Court, Northern District of California, case number CV 05-03185-SI [dismissed on February 7, 2006 for failure to state a cause of action]; (3) *Evans v. Federal Bureau of Investigations*, U.S. District Court, Eastern District of California, case number 1:05-cv-01407 OWW/DLB [dismissed March 9, 2006 for lack of subject matter jurisdiction]; (4) *Evans v. Riggs Ambulance Services, Inc.*, U.S. District Court, Eastern District of California, case number CV-F-06-1889 OWW/SMS [dismissed January 4, 2007 and remanded to Merced County Superior Court due to plaintiff's improper removal to federal court]; (5) *Evans v. Department of Fair Employment and Housing*, U.S. District Court, Eastern District of California, case number CV F 06-1890 AWI LJO [dismissed February 2, 2007 and remanded to state

court due to plaintiff's improper removal to federal court];[3] (6) *Evans v. Berry*, U.S. District Court, Northern District of California, C 07-01430 JW [dismissed August 24, 2007 for failure to exhaust administrative remedies]; (7) *Evans v. Terminix International Company* (Jan. 23, 2007, F050166) [nonpub. opn.] [this court affirmed petition to confirm arbitration award adverse to plaintiff]; (8) *Evans v. Merced County Sheriff's Department* (Dec. 12, 2006, F049621) [nonpub. opn.] [this court affirmed judgment sustaining demurrer to plaintiff's complaint]; (9) *Evans v. Merced County Sheriff's Department*, Merced County Superior Court, case number 150409 [demurrer sustained without leave to amend on August 23, 2007]; (10) *Evans v. Federal Bureau of Investigations*, Ninth Circuit Court of Appeal, case number 06-16068 [appeal dismissed September 25, 2006 for lack of jurisdiction]; (11) *Evans v. Unknown Names*, Ninth Circuit Court of Appeal, case number 06-16136 [appeal dismissed September 18, 2006 for lack of jurisdiction]; (12) *Evans v. Unknown Names*, Ninth Circuit Court of Appeal, case number 07-16514 [appeal dismissed October 10, 2007 for lack of jurisdiction]; and (13) *Evans v. County of Santa Clara*, Ninth Circuit Court of Appeal, case number 07-16530 [appeal dismissed October 10, 2007 for lack of jurisdiction].

These findings are supported by substantial evidence in the form of copies of pleadings and trial or appellate court rulings on the above actions, so they must be upheld on appeal. (*Bravo, supra*, 99 Cal.App.4th at p. 219.) Although plaintiff asserts only one of these cases was finally decided adversely to him, he does not set forth a reasoned argument or citation to authority on this issue. We are not required to "'consider points which are not argued or which are not supported by citation to authorities or the record.'"

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[3] In the state court case plaintiff attempted to remove to federal court, this court affirmed the trial court's entry of judgment in the defendant's favor after it sustained the defendant's demurrer without leave to amend. (*Evans v. Department of Fair Employment and Housing* (June 23, 2008, F053051) [nonpub. opn.].) We subsequently denied plaintiff's request for rehearing.

(*Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979.) Indeed, where an appellant fails to support a point with reasoned argument and citations to recognized legal authority, we may treat the point as waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785.) We do so here.

Plaintiff also asserts federal cases cannot be counted as actions determined adversely against him, citing *Roston v. Edwards* (1982) 127 Cal.App.3d 842 (*Roston*). In *Roston*, the court held that under former section 391, subdivision (a)'s definition of "litigation," namely that it "'means any civil action or proceeding, commenced, maintained or pending *in any court of this State*'," federal court proceedings could not be counted as litigation as used in the vexatious litigant statute. (*Roston, supra,* 127 Cal.App.3d at p. 848.) As defendants point out, section 391, subdivision (a) has since been amended to expressly include federal court proceedings in the definition of litigation: "Litigation means any civil action or proceeding commenced, maintained or pending in any state or *federal* court." (Emphasis added.) Therefore, plaintiff's contention that federal proceedings cannot be counted is without merit.

DISPOSITION

The order declaring appellant to be a vexatious litigant is affirmed. Respondents are awarded their costs on appeal.

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Gomes, J.

WE CONCUR:

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Cornell, Acting P.J.

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Dawson, J.